

1 Plaintiff believes that this provision should apply statewide to everyone or not at all. (Doc.
 2 1). Defendant has filed a Motion to Dismiss the Complaint under Federal Rules of Civil
 3 Procedure 12(b)(1) and 12(b)(6). (Doc. 4). Defendant argues that Plaintiff's claims are barred
 4 by the Eleventh Amendment's immunization of non-consenting state officials from suits
 5 brought by citizens, and that Plaintiff has failed to state a claim upon which relief can be
 6 granted. (*Id.*).¹ Defendant also filed a Motion to Strike Plaintiff's Amended Complaint for
 7 failure to comport with Federal Rule of Civil Procedure 15(a).²

8 DISCUSSION

9 I. Legal Standard

10 Defendant moves to dismiss Plaintiff's action pursuant to Rule 12(b)(6) of the Federal
 11 Rules of Civil Procedure. (Doc. 4). To survive dismissal for failure to state a claim pursuant
 12 to Federal Rule of Civil Procedure 12(b)(6), a complaint must contain more than "labels and
 13 conclusions" or a "formulaic recitation of the elements of a cause of action"; it must contain
 14 factual allegations sufficient to "raise a right to relief above the speculative level." *Bell Atl.*
 15 *Corp. v. Twombly*, 550 U.S. 544, 555 (2007). While "a complaint need not contain detailed
 16 factual allegations . . . it must plead 'enough facts to state a claim to relief that is plausible
 17 on its face.'" *Clemens v. DaimlerChrysler Corp.*, 534 F.3d 1017, 1022 (9th Cir. 2008)
 18 (quoting *Twombly*, 550 U.S. at 570). The plausibility standard "asks for more than a sheer
 19 possibility that a defendant has acted unlawfully. Where a complaint pleads facts that are
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 22 ¹ Because Plaintiff's Complaint can be dismissed on a Rule 12(b)(6) basis, it is not
 23 necessary to discuss Defendant's Rule 12(b)(1) claim.

24 ² Rule 15(a) provides that "[a] party may amend its pleading once as a matter of
 25 course within (A) 21 days after serving it, or (B) if the pleading is one to which a responsive
 26 pleading is required, 21 days after service of a responsive pleading or 21 days after service
 27 of a motion under Rule 12(b) . . . , whichever is earlier. In all other cases, a party may amend
 28 its pleading only with the opposing party's written consent or the court's leave." FED.R.CIV.P. 15(a). Plaintiff filed his amended complaint, (Doc. 7), more than 21 days after
 service of Defendant's Motion to Dismiss and without leave of the Court or consent by
 opposing counsel. Thus, the Court grants Defendant's Motion to Strike. (Doc. 8).

merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief." *Id.* (quoting *Twombly*, 550 U.S. at 555) (internal citations and quotation marks omitted). Finally, because Plaintiff is a pro se litigant, the Court must hold his pleadings "to less stringent standards than formal pleadings drafted by lawyers." *Haines v. Kerner*, 404 U.S. 519, 520 (1972).

When analyzing a complaint for failure to state a claim under Rule 12(b)(6), "[a]ll allegations of material fact are taken as true and construed in the light most favorable to the nonmoving party." *Smith v. Jackson*, 84 F.3d 1213, 1217 (9th Cir. 1996). However, legal conclusions couched as factual allegations are not given a presumption of truthfulness, and "conclusory allegations of law and unwarranted inferences are not sufficient to defeat a motion to dismiss." *Pareto v. FDIC*, 139 F.3d 696, 699 (9th Cir. 1998).

II. Analysis

Generally, "[t]o state a claim . . . for a violation of the Equal Protection Clause . . . [,] a plaintiff must show that the defendants acted with an intent or purpose to discriminate against the plaintiff based upon membership in a protected class." *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998). To demonstrate a suspect classification, "a plaintiff can show that the law is applied in a discriminatory manner or imposes different burdens on different classes of people." *Freeman v. City of Santa Ana*, 68 F.3d 1180, 1187 (9th Cir. 1995).

Here, Plaintiff's pleadings do not sufficiently allege facts demonstrating a suspect classification in order to survive a Rule 12(b)(6) motion. Plaintiff does not allege that the Executive Order burdens a fundamental right or targets a suspect class.³ Plaintiff only asserts that the Order protects the "State elected and employed." (Doc. 1, ¶ 4). He later posits, in his Response to Defendant's Motion to Dismiss, that this was not a reasonable classification.

³ When "a classification neither involv[es] fundamental rights nor proceed[es] along suspect lines," the statute "is accorded a strong presumption of validity," *Heller v. Doe by Doe*, 509 U.S. 312, 319 (1993), and the Court will uphold the statute "so long as it bears a rational relation to some legitimate end." *Romer v. Evans*, 517 U.S. 620, 631 (1996).

1 (Doc. 5). The classification asserted—state employees compared to everyone else—does not
2 implicate a suspect class.

3 The United States Supreme Court has recognized “successful equal protection claims
4 brought by a ‘class of one,’ where the plaintiff alleges that [he] has been intentionally treated
5 differently from others similarly situated and that there is no rational basis for the difference
6 in treatment.” *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000); *see also SeaRiver*
7 *Maritime Fin. Holdings, Inc. v. Mineta*, 309 F.3d 662, 679 (9th Cir. 2002). Even under this
8 standard, Plaintiff has failed to state a claim. He has failed to allege that he was treated
9 differently than similarly situated individuals and that there was no rational basis for treating
10 him differently.

11 CONCLUSION

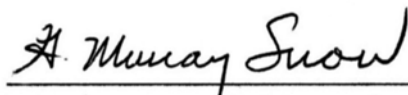
12 Because Plaintiff has not illustrated that the Executive Order involves a suspect
13 classification or burdens a fundamental right, he has not posited a cognizable Equal
14 Protection claim. Thus, Plaintiff fails to state a claim upon which relief can be granted, and
15 the Court does not need to examine Defendant’s Rule 12(b)(1) assertion.

16 **IT IS THEREFORE ORDERED** that Defendant’s Motion to Dismiss (Doc. 4) is
17 **GRANTED.**

18 **IT IS FURTHER ORDERED** that Defendant’s Motion to Strike (Doc. 8) is
19 **GRANTED.**

20 **IT IS FURTHER ORDERED** directing the Clerk of the Court to terminate this
21 action.

22 DATED this 25th day of March, 2011.

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26 G. Murray Snow

27 United States District Judge
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